

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Bridging the Digital Divide for Low-Income Consumers)	WC Docket No. 17-287
)	
Lifeline and Link Up Reform and Modernization)	WC Docket No. 11-42
)	
Telecommunications Carriers Eligible for Universal Service Support)	WC Docket No. 09-197
)	

REPLY COMMENTS OF TRACFONE WIRELESS, INC.

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TracFone Wireless, Inc. (“TracFone”), through its attorneys, hereby offers these Reply Comments in support of and to update its Renewed Motion for relief relating to the Commission’s Lifeline program minimum service standards.¹

I. INTRODUCTION AND SUMMARY

Consistent with the comments of the National Lifeline Association (“NaLA”), TracFone requests that the Commission eliminate minimum service standards regime. In the alternative, TracFone requests that the Commission adapt the regime to better serve the goals of the Lifeline program by freezing the standards at 2018 levels pending the results of the State of the Lifeline Marketplace Report, enabling carriers to offer “units” plans for voice and broadband services (at TracFone’s initially-proposed level of 1,000 units per month rather than the 2,000 units proposed in the Renewed Motion) as a voluntary means of fulfilling its frozen minimum service standard obligations, and accelerating the Report deadline to December 2019. In addition, consistent with

¹ TracFone Wireless, Inc., Renewed Motion for Declaratory Ruling or for Waiver for the Purpose of Conducting a Market Test of Consumer Demand for Lifeline Service Offerings, WC Docket Nos. 17-287, 11-42, 09-197 (filed July 5, 2018).

the comments of NaLA and the Missouri Public Service Commission, the Commission should eliminate its planned phase-down of support for standalone voice services.

II. THE COMMISSION SHOULD ELIMINATE THE MINIMUM SERVICE STANDARDS REGIME

TracFone agrees with the Commission that Lifeline broadband and mobile services should “meet the needs of consumers,” but the fact remains that minimum service standards undermine, rather than serve, this objective. In its comments on TracFone’s Renewed Motion and a Petition by NTCA seeking a temporary waiver of the 2019 standards for its members,² NaLA asserts that instead of providing relief from or revising its interpretation of the minimum service standards, the Commission should eliminate them altogether.³ In support of its position, NaLA rightly observes that the minimum service standards “substituted [the Commission’s] judgment for that of consumers nationwide when it comes to making decisions about the types of communications services that are desired and affordable,” and, as a result, the standards “have had and will continue to have an adverse impact on consumers and will impede the Lifeline program’s central goal of making communications services affordable for all low-income households.”⁴ The Commission should heed the recommendation offered by NaLA and numerous other Lifeline stakeholders over the past three years and eliminate minimum service standards.

TracFone has long cautioned the Commission that minimum service standards are detrimental to the Lifeline program and the consumers who depend on it. When the Commission first proposed to adopt minimum service standards for voice and broadband Lifeline service in its

² Petition for Temporary Waiver of NTCA – The Rural Broadband Association, WC Docket Nos. 11-42, 09-197, 10-90 (filed July 23, 2018).

³ Comments of the National Lifeline Association Comments, WC Docket Nos. 17-287, 11-42, 09-197, 10-90 (filed Aug. 30, 2018) (“NaLa Comments”).

⁴ NaLA Comments at 4.

2015 *Second Further Notice of Proposed Rulemaking*,⁵ TracFone vehemently opposed the proposal, explaining that the proposed regime ignores both “the dynamics of the marketplace” and “the inherent differences between wireless and wireline telecommunications services, and how those differences are perceived by consumers.”⁶ After the Commission adopted minimum service standards in its 2016 *Lifeline Modernization Order*,⁷ TracFone filed a Petition for Reconsideration urging the Commission to reconsider its decision to impose minimum service standards, explaining that the record neither demonstrated the need for minimum service standards nor supported the specific standards chosen by the Commission. TracFone further warned that the imposition of such standards would require providers to charge for services, making Lifeline service unaffordable for many consumers and undermining the Commission’s goals for the program.⁸

In 2018, on the brink of yet another scheduled increase, the disadvantages of the minimum service standard regime are more pronounced than ever. As NaLA explains in its comments, “the minimum service standards have forced providers to scale back investment in Lifeline enrollments, which in turn has depressed the program participation rates in all states.”⁹ Indeed, TracFone—the nation’s largest provider of Lifeline services—has been forced to reduce marketing to new subscribers to the bare minimum required under FCC rules in response to the added costs presented by the escalating minimum service standards. These costs also have hindered TracFone’s ability to provide innovative service offerings that maximize consumer benefits and choice for its existing

⁵ *Lifeline and Link Up Reform and Modernization et al.*, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, 30 FCC Rcd 7818, ¶¶ 15-62, (2015).

⁶ Comments of TracFone Wireless Inc., WC Docket Nos. 17-287, 11-42, 09-197, at 10 (filed Aug. 31, 2015) (“TracFone 2015 Comments”).

⁷ *Lifeline and Link Up Reform and Modernization et al.*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, ¶¶ 69-113 (2016) (“2016 *Lifeline Modernization Order*”).

⁸ Petition for Reconsideration of TracFone Wireless, Inc., WC Docket Nos. 11-42, 09-197, 10-90, at 6-18 (filed June 23, 2016).

⁹ NaLA Comments at 4-5.

customers, forcing TracFone to pivot its focus to its “Bring Your Own Phone” program and drastically limit the options for consumers who do not already have devices.

As TracFone explained in its 2015 Comments, “[l]ow-income households benefit most” from the Lifeline program “by being able to choose the Lifeline service that best meets their needs.”¹⁰ For too long, the Commission has allowed the minimum service standard regime—which “ignore[s] the vigorous efforts of ETCs . . . to meet evolving consumer demand for mobile services, and substitute[s] [the Commission’s] choice of service plans for those of consumers”¹¹—to threaten the Lifeline program, depress consumer choice and Lifeline enrollment, and undermine the program’s policy objectives. The Commission should take up NaLa’s call to revisit the minimum service standards regime, grant the long-pending Petition for Reconsideration filed by the Joint Lifeline ETC Petitioners in 2016,¹² and abolish minimum service standards.

III. IN THE ALTERNATIVE, THE COMMISSION SHOULD ADAPT THE MINIMUM SERVICES STANDARDS REGIME TO REFLECT THE REALITIES OF THE LIFELINE MARKET AND MAXIMIZE CONSUMER CHOICE

Should the Commission decide to retain minimum service standards, it should work to ensure that the requirements will actually lead to Lifeline services that meet the needs of low-income consumers, consistent with the Commission’s policy goals. To this end, the Commission should revise the minimum service standards regime so that it reflects the realities of the Lifeline marketplace, including the mounting costs of providing certain levels of service on an escalating basis, and maximizes choices available to consumers, whose needs may vary with respect to voice

¹⁰ TracFone 2015 Comments at ii.

¹¹ NaLa Comments at 3.

¹² See Joint Lifeline ETC Petitioners’ Petition for Partial Reconsideration and Clarification, WC Docket Nos. 11-42, 09-197, 10-90 (filed June 23, 2016) (Joint ETC Petition). As NaLa explained in its comments, “[t]he Commission originally received comments on the petition in 2016, but the petition remains pending and this cycle is an opportunity to refresh the record on this request.” NaLa Comments at 3.

and data services. Of course, any policy the Commission adopts should be evidenced-based and supported by robust data.

Accordingly, the Commission should take the following steps: (i) freeze the minimum service standards at the current levels of 750 minutes and 1 gigabit (GB) per month pending the outcome of the State of the Lifeline Marketplace Report; (ii) adopt TracFone’s “units” proposal on a voluntary basis and enable subscribers of participating providers to choose their level of service from 1000 monthly units; and (iii) accelerate the Marketplace Report deadline to 2019.

A. The Commission Should Freeze the Minimum Service Standards at the Current Levels of 750 Minutes and 1 GB Per Month Pending the Outcome of the Market Study.

The minimum service standards currently require carriers to offer 750 monthly minutes of voice service and 1 GB per month of mobile broadband data.¹³ On December 1, 2018, these minimum standards will increase to 1000 minutes and 2 GB, respectively.¹⁴ As the minimum service standards increase, its negative consequences—from the dwindling number of providers who can still offer no-cost Lifeline services and remain profitable to decreased enrollment due to carriers scaling back their marketing efforts—also become increasingly pronounced. As NaLa explains, although “these harms to low-income consumers and the Lifeline program provide ample evidence to support eliminating the minimum service standards altogether, if the Commission is not prepared to do so at this time, it should at least suspend any future increases to them until it completes the State of the Lifeline Marketplace [R]eport, which the Commission is required to do by June 30, 2021.”¹⁵

¹³ 47 C.F.R. § 54.408(b).

¹⁴ *Id.*

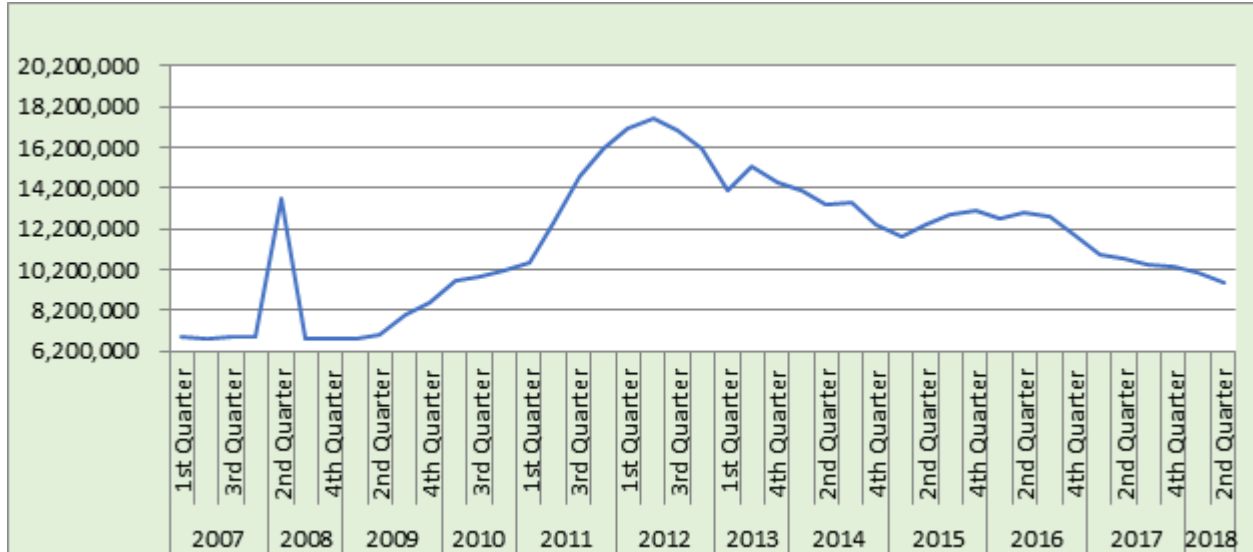
¹⁵ NaLa Comments at 7.

The proposed increase comes at an inflection point for Lifeline providers, who are already struggling to meet the existing minimum service standards. The looming increase may make it virtually impossible for some providers to continue providing Lifeline services at rates that low-income households can afford. Even where they can, the costs of meeting the minimum requirements have dis-incentivized, and even prevented, providers from taking forward-looking steps to encourage enrollment in their services or provide innovative offerings. As discussed above, the current minimum service standards have forced TracFone to reduce marketing efforts to the bare minimum and to modify its Lifeline handset offerings with an emphasis on “Bring Your Own Device.” Such change could further discourage the poorest of the poor – those who lacking the necessary resources or technical know-how to obtain a compatible smartphone – from applying for and participating in the Lifeline program.

Already, the minimum service standards are having a dramatic impact on Lifeline enrollment. As illustrated by the chart below, for the first time since 2009, when non-facilities-based carriers first began to participate in the program, the number of Lifeline subscribers have dipped below 10 million households this year, a drop of over 2 million subscribers since the 2016 Lifeline reform order was first adopted.¹⁶ While factors such as an improving economy and better measures at preventing waste, fraud, and abuse could have contributed to this dramatic change in participation rate, make no mistake about it: the minimum service standard is on a path to single-handedly decimate the program.

¹⁶ See Universal Service Administrative Company, FCC Filings (last visited Sept. 2018), <https://www.usac.org/about/tools/fcc/filings/default.aspx>.

USAC Count of Overall Subscribers by Quarter from 2007 to 2Q 2018



To avoid worsening the Lifeline program’s participation by carriers and eligible customers alike, the Commission should freeze the minimum service standards at the existing level of 750 minutes for voice services or 1 GB of data for broadband services per month. In explaining the minimum standards chosen for the Lifeline services, the Commission stated in the *2016 Modernization Order* that the standards purportedly “strike a balance between the demands of affordability and reasonable comparability by providing consumers with services that allow them to experience many of the Internet’s offerings, but not mandating the purchase of prohibitively expensive offerings.” But in setting the initial minimum service standards, the Commission primarily focused on establishing the minimum standards for data usage allowance that is comparable to the amount of data the average American consumer used on the monthly basis, which was 2GB. The Commission then adopted a multi-year phase-in plan to make the 2GB per month broadband data allowance the minimum standard by December 2018.

In demanding reasonable compatibility for Lifeline services, the Commission did not adequately consider then balance the demands of affordability, as The FCC did not examine

whether the \$9.25 per month federal subsidy would sufficiently render the \$2GB minimum data plan – the most minimal data plan an eligible Lifeline subscriber can purchase – affordable. To the contrary, given that the federal Lifeline subsidies are inadequate to cover the cost of provisioning a 2 GB data plan to Lifeline subscribers, the minimum service standard effectively eliminated the most affordable Lifeline service there was: the “no cost” Lifeline offerings that do not require any payment from Lifeline customers.

On the eve of completing the phase-in of the initial minimum service standard, the Commission should seize this opportunity to truly rebalance the Lifeline program’s twin goals of making communications services that are (1) comparable in quality and (2) affordable to low-income Americans. Furthermore, instead of continuing to increase minimum service standards both based on a schedule that was imposed at a time of “inherent uncertainty in the future Lifeline marketplace”¹⁷ and in direct contravention of robust evidence suggesting the market cannot support the continuous ratcheting-up, the Commission should freeze the standards in place and allow the market to catch up to the existing requirements. Finally, freezing the minimum service standard at the current level not only helps the program avoid the disastrous outcome of mandating a consumer co-pay for Lifeline services, it also gives the Commission an opportunity to update the minimum service standard using an “objective, data-based methodology”¹⁸ that would ensure low-income consumers continue to receive sufficiently robust services.

The State of the Lifeline Marketplace Report, which the Commission introduced in its *2016 Lifeline Modernization Order*, was designed to bear this out, and will provide the Commission with the data it needs to evaluate the minimum service standards regime. Indeed, in the *2016 Order* the Commission stated its expectation that it would “take appropriate action if necessary to

¹⁷ *2016 Lifeline Modernization Order* ¶ 66.

¹⁸ *Id.* ¶ 77.

make changes to the program within six months of receiving the report,” including “for example, adjusting support levels or minimum service standards, so that the Lifeline program continues to achieve its objectives.”¹⁹ The Report, which will “consider the prevalence of subscriptions to various service offerings in the Lifeline program, the affordability of both voice and broadband services, the pace since adoption of this Order at which voice and data usage has changed, and the associated net benefits of continuing to support voice service as a standalone option,” will directly inform the Commission about the viability of minimum service standards and whether the Lifeline market can withstand continued standards escalation.²⁰ Pricing carriers and consumers alike out of the market for Lifeline services will do nothing to advance the goals of the program. The Commission should adapt to market realities and freeze the existing minimum service standards pending the outcome of the Marketplace Report.

B. The Commission Should Permit Carriers to Offer Units Plans, Pursuant to Which Consumers Can Choose Their Level of Service from 1000 Monthly Units.

In addition to freezing minimum service standards, the Commission should implement TracFone’s proposal to enable carriers to offer subscribers a monthly plan of service “units” on a voluntary basis, pursuant to which consumers can choose their level of service by distributing the units across broadband and voice services. However, instead of the revised 2,000-unit proposal put forth in TracFone’s Renewed Motion, the Commission should adopt TracFone’s initial proposal of 1,000 units per month.

As TracFone explained in its Renewed Motion, TracFone doubled its initial proposal of 1,000 units per month as a result of the planned increase in minimum service standards scheduled for December 1, 2018. Since then, TracFone has engaged in consultation with its underlying

¹⁹ *Id.*
²⁰ *Id.* ¶ 66.

facilities-based carriers that would actually be responsible for keeping track of a Lifeline customer's unit usage in real time. Based on these discussions, TracFone has learned that the units proposal may be particularly challenging and time consuming for certain carriers to implement. Doubling the number of units from 1,000 to 2,000 would drastically increase the administrative complexity of utilizing units. Therefore, while TracFone continues to believe in the merits of the units proposal that would provide greater consumer choice and control over their Lifeline services, the Commission should permit carriers to pursue the units regime as an alternative means of satisfying the requirements of a frozen minimum service standard, but not as a mandate. Those carriers that wish to offer a minimum of 750 voice minutes and/or 1GB of data should continue to be allowed to do so, others that have the means and technical ability to deploy a unit system should be allowed to do so as well. Accordingly, the Commission should adopt TracFone's initial 1,000-unit proposal as a voluntary measure that could help contribute to the competitiveness and innovativeness of the Lifeline marketplace. As TracFone explained in its Renewed Motion, the units plan as presented in the *NPRM* received broad support among commenters.²¹

The unit proposal is one of the best paths forward in a world in which the Commission maintains minimum service standards. With the standards frozen at 2018 levels pending the outcome of the Marketplace Report, TracFone agrees that a 1,000-unit plan is "the appropriate unit measurement," allowing a level of service that is "superior to the current lowest minimum service standard of 750 minutes" while also "resolv[ing] the illogical disconnect between the voice and broadband minimum service standard requirement."²² The units plan would be voluntary for carriers, preserving the flexibility of providers to offer services that both meet their subscribers' needs and align with carriers' business models. Subscribers whose carriers offer units plans would

²¹ TracFone Comments at 3-5.

²² NaLa Comments at 10.

have the power and flexibility to choose a unique, tailored service offering that directly meets their needs.

C. The Commission Should Accelerate the Lifeline Marketplace Report Deadline to 2019.

With the threat of increased service standards at bay and the flexibility-maximizing units plan regime in place, the Commission should turn its attention to the future of the Lifeline market and require the Wireline Competition Bureau to complete the State of the Lifeline Market Report by the end of 2019. Because the Report will provide important data that will enable the Commission to make informed policy choices about increasing levels of service or adjusting support, TracFone sees no reason to delay this Report until 2021. Indeed, informed by the Report, the Commission can be confident that minimum service standards harm the Lifeline program, that any minimum service standards it imposes in the future can in fact be sustained by the market, and that a units plan regime is a useful means to ensure that the Lifeline program fulfills its purpose. Accordingly, the Commission should accelerate the Report deadline to December 2019.

IV. THE COMMISSION SHOULD RETAIN SUPPORT FOR STANDALONE VOICE SERVICES.

Consistent with TracFone's proposal to afford Lifeline subscribers the flexibility to choose the services that work for them, the Commission should discontinue its planned phase-down for support of standalone voice services. As TracFone explained in its 2016 Petition for Reconsideration and reiterated in its comments on the Commission's *2017 Lifeline Reform NPRM*,²³ because "[t]here are and will always be a portion of the populace for whom the most essential telecommunications service is the ability to make a phone call or receive a phone call, without regard to whether those persons can afford a bundled Lifeline service which includes both

²³ *2017 Lifeline Reform NPRM* ¶ 75.

voice and broadband service,” the proposed phase-down will result in the “loss of an essential service relied upon for years by millions of low-income households.”²⁴

As the Missouri Public Service Commission explained in its comments supporting TracFone’s Renewed Motion, “[t]he prospect of wireless Lifeline providers solely offering cell phones limited to data usage without any voice service is troubling.”²⁵ NaLA reiterates this view, observing that “voice service remains an essential component of the Lifeline program, particularly for public safety reasons, because it allows consumers to access emergency services and stay connected with loved ones during natural and manmade disasters such as wildfires, hurricanes, and mass shootings,” and that “there is no support in the record for reducing and eventually eliminating support for voice-only Lifeline plans.”²⁶ Consistent with its *2017 NPRM*, the Commission should revisit its phase-down of voice-only services and reverse this decision entirely. In conjunction with the proposals outlined above, this decision would afford Lifeline providers the requisite flexibility to offer service plans that best fit the needs of today’s low-income consumers.

²⁴ Comments of TracFone Wireless, Inc., WC Docket Nos. 17-287, 11-42, 09-197, at 56 (filed Feb. 21, 2018) (quoting TracFone Petition for Reconsideration at 2).

²⁵ Comments of the Missouri Public Service Commission, WC Docket Nos. 17-287, 11-42, 09-197, at 2 (filed Aug. 30, 2018).

²⁶ NaLa Comments at 6.

V. CONCLUSION

In light of the foregoing, TracFone respectfully requests that the Commission take action on the Lifeline program consistent with these Reply Comments.

Respectfully Submitted,

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